Testimony of Dr. Harold Beam on behalf of
The CT Society of Plastic and Reconstructive Surgeons and the
CT State Medical Society
In opposition to the Cosmetic Surgery Tax Proposed in SB 1007
Before the Finance, Revenue and Bonding Committee
March 7, 2011

Good afternoon, Senator Daily, Representative Widlitz and distinguished members of the Finance, Revenue and Bonding Committee. My name is Ed Beam, and I am a board certified plastic and reconstructive surgeon practicing in Glastonbury, CT and on staff at Hartford Hospital, Saint Francis Hospital and Manchester Memorial Hospital. I am here today as President of the CT Society of Plastic and Reconstructive Surgeons to speak against Governor Malloy's cosmetic surgery tax proposal contained in SB 1007.

While on the surface, this proposal may seem easier to support than some of the other taxes on the table, I think there are several long term effects this tax will have on access to critical specialty surgical care in this state. Although the language exempts reconstructive services such as craniofacial surgery on cleft palates, breast reconstruction following mastectomy for cancer, breast reduction for back and neck pain, skin grafts and flaps for skin cancer reconstruction, burn care, and the list goes on - it penalizes the very physicians that provide this critical care. These surgeries are often reimbursed far below what it costs to provide and many surgeons subsidize this care within their practices with their cosmetic revenue. Already the malpractice premiums we face are a challenge, couple this with an

added tax that will not be reimbursed by insurers, and the possibility of recruiting and retaining quality physicians will grow even more challenging. The down turn in the economy has had a dramatic effect on our specialty over the last two years, leading several of our members to retire, taking their expertise and experience with them. This added burden will only serve to exacerbate this situation.

In New Jersey, the only state that has a similar tax, it has actually cost more money to collect the tax than it has generated. In fact, according to Assemblyman Joseph Cyran, the original sponsor of the NJ tax, it costs the state $3.39 for every $1.00 that is collected. Assemblyman Cryan now calls for its repeal, and has stated in the attached letter, "there is a fine line between reconstructive and cosmetic," and "overall the tax has been expensive to administer and generated minimal income."

Who will determine what is cosmetic and what criteria will be used? Let's consider a few simple conditions.

Acne: Some people get one or two pimples every few months and their skin responds nicely to good skin care and hygiene. Other patients fail multiple courses of antibiotics and require treatment with acutane. Most patients are somewhere in between and they may benefit from facials and various light or laser treatments. How many pimples are taxable? 2or 3, 5 or 6.... and is it per one month, or two months, etc?

Prominent ears: This is a congenital deformity which is rarely covered by insurance. Kids look funny and they get teased and bullied. Insurance won't pay, parents want to get the ears fixed so they pay, and the governor wants to make money on the family's misfortune. Should this be considered reconstructive and if so should insurance companies be required to change their policies?

Gynecomastia: This is enlarged breast tissue in males. Older men don't usually mind the "man bra" but breast enlargement bothers teenagers and young men tremendously. Treatment is rarely covered by insurance. If your son or grandson was so embarrassed that he refused to remove his shirt in gym class, at the backyard pool or the beach, would you consider the surgery necessary or cosmetic? If we accept that some are cosmetic and some are reconstructive will the distinguishing criteria be the weight or volume of tissue removed, the patients emotional response to the condition, or an auditors impression of the patients appearance in preoperative photographs?

Scars from dog bites, accidents, burns, etc. Perception is everything. Some patients are bothered by scars that I can barely see. Others have huge scars that you can see across the room. Who will decide which are cosmetic? What criteria will we use? What if the patient disagrees? What if the doctor and patient think it was reconstructive and not subject to tax but the tax police disagree? Is the doctor now liable? How will this affect the doctor patient relationship going forward?

We can keep going with many more examples but I think it is obvious already that this is a very difficult issue with many variables, ambiguities, and differences in perception and perspective. This is why NJ spent a lot more money administering the tax than it collected from the tax.

How will the tax be enforced? Will a new audit department be created to come out to our offices? Will charts be reviewed, potentially exposing private HIPPA protected health care information to non medical personnel - things like mental state, drug use, and HIV status? Who will decide all those cases in the gray area? What about appeals? With insurance denials the patient and doctor both have opportunities to appeal unfavorable decisions.

All of the health information is confidential. I'd like to mention that one of our own members - a surgeon in the Hartford area - was on that now infamous laptop that was lost by the CT Department of Revenue Services, exposing him to potential identify theft. I shudder at the potential ramifications to our own patients under this proposal.

Connecticut's proximity to New York, Rhode Island and Massachusetts makes the "surgical flight" of patients very likely. Travelling to any one of these states is easy and quick, and without a tax on health care, more affordable. Think about patients who come here from other states. I have treated patients from Maine, NH, VT, MA, RI, NY, NJ, PA, OH, VA, FL, CA, Alaska, and some from overseas. These patients pay

my fee which I then pay tax on. They pay the anesthesiologist and hospital or surgery center. They spend money at hotels, restaurants, gas stations, pharmacies, malls, etc.

In New Jersey, "surgical flight" accounted for a 52% drop in cases between 2005-2008. It is not unreasonable to expect a similar reduction here in Connecticut. A reduction that will have a direct impact on our small businesses and the staff we employ, and the income tax we already pay. As our business decreases we will have to downsize our office staff. This will raise unemployment and further decrease the income tax base here in CT. These are just some of the concerns SB 1007 raises.

I have outlined very real problems with this proposal and I hope you will seriously consider its consequences and oppose including this language in the final tax package developed by this committee. As a small business owner, and the 45 small business owners that are plastic surgeons in Connecticut, our staff, and our patients, I strongly urge your opposition to this proposal.

Thank you for the opportunity to address the committee, I would be happy to answer any questions.

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Dear Legislative Colleagues,

I write to my colleagues in State Legislatures around the country to express my opinion on the tax on cosmetic medical procedures, passed here in New Jersey in July, 2004.

By way of background, I serve as Majority Leader of the New Jersey State Assembly, and am the immediate past chairman of the New Jersey Democratic State Committee. I was elected in 2002 to the Assembly, representing District 20 (Union County). I have served as chairman of the Assembly Human Services Committee, and as vice chairman of the Assembly Appropriations Committee.

It was in this capacity and my involvement with the New Jersey budget process, that I was asked to sponsor legislation (Assembly Bill A-3125; P. L. 2004 c. 53) which established a 6% gross receipts tax on cosmetic medical procedures. The tax was created to help fund "charity care" – the pool of money that hospitals receive for giving care to indigent and uninsured patients. The fiscal note that accompanied the bill was for an estimated $24 million annually. The tax was discussed and passed within a few weeks at the end of the budget cycle. There was minimal testimony and discussion about the ramifications of such a tax.

We thought a cosmetic procedure tax was a creative approach to line item deficits in our state's budget. Unfortunately, it was an untested revenue stream that ultimately hasn't delivered. Instead of the projected $24 million annually, the Division of Taxation estimates collections of less than $7.6 million – a 69 percent shortfall.

Health care providers and patients were not given the opportunity to publicly argue against this tax. New Jersey did not conduct a cost-benefit analysis to determine the true impact of the plastic surgery tax.

Immediately after passage, I met with health care providers and began to understand the nuances and problems with this tax. For example, the tax is confusing – there is a fine line between "reconstructive" and cosmetic." Different insurance companies have varying coverage criteria for medical necessity/function. Physicians and insurers often disagree on medical necessity. The law provides no guidance on whether the patient, physician, insurer or state

agency will ultimately determine medical necessity. Some procedures are partially cosmetic and partially functional, which raised questions whether the tax will apply only to the portion that is cosmetic.

New Jersey was the first state in the union to pass a tax on cosmetic medical procedures. Numerous other states have considered a similar tax – and based on the New Jersey experience, have rejected the idea. I have personally spoken with legislative colleagues in other states and encouraged them to reject the initiative

In December, 2009, a similar measure was advanced in Washington, DC, when Congress put forward a cosmetic tax. Again, I spoke with my federal counterparts and educated them on the real world failure of the tax here in New Jersey. Congress agreed and tabled the idea.

When the tax was initiated late in the 2004 budget debate, it was argued that these services were performed on wealthy women, who could easily foot the bill for the additional tax. In reality, 86% of plastic surgery patients are working women. According to a 2004 study by the American Society of Plastic Surgeons, 60 percent of respondents planning to have plastic surgery within the next two years reported a household income between $30,000 and $90,000, and 40 percent of that group reported incomes ranging from $30,000 to $60,000.

New Jersey physicians and hospitals have always struggled to maintain their patient base, competing with the world class reputations of the health care systems in Philadelphia and New York. This tax further exacerbates this pre-existing competitive disadvantage, with patients easily moving to a nearby (and out of state) physician to receive cosmetic services. This loss of business is compounded with its loss impact on related services – physician employees, medical equipment, etc.

Ask the New Jersey Division of Taxation about this tax! They will tell you it's a hassle to collect – to determine what's taxable and what's not. Physicians are not used to collecting "sales tax" in their offices. The collections aren't even close to the projected $26 million. Federal HIPAA laws governing patient privacy prohibit review of patient records in an audit. Further, the law does not stipulate record-keeping obligations for physicians. A mere $7 million was collected in year one. Overall, the tax has been expensive to administer and generated only minimal income.

The physicians were very vocal and organized in their efforts to repeal this tax. Independent studies have proven, that, after two years, for every $1.00 collected in cosmetic tax, the state has LOST $3.39 in total state revenue.

These were compelling arguments – so compelling, in fact, that I agreed to sponsor the legislation that would REPEAL this tax. A-2282/S-1783 passed unanimously in the Senate and Assembly at the end of 2006. Unfortunately, The Governor's Treasury Department recommended a veto for fear that the floodgates would open and other tax repeal efforts would be attempted.

Efforts continue to repeal this measure through legislation currently introduced in New Jersey.

I am available to discuss this initiative with you should you have any questions or comments. Thank you for your consideration of my opinion and expertise with this legislation.

Sincerely,

Assemblyman, District 20
New Jersey State Assembly